

U.S. Serial No. 09/974,639
Response to Office Action
Mailed October 20, 2004

Page 7 of 8

REMARKS

Applicants have reviewed the Office Action mailed October 20, 2004, along with the references cited and applied by the Examiner. In response, selected claims have been amended to place allowable subject matter in independent form, address any indefiniteness issues, and define over any fair teaching associated with the art. Reexamination and reconsideration of the application, as amended, are respectfully requested.

Applicants have canceled claims 17-42 as being directed to previously withdrawn, non-elected subject matter. Applicants reserve the right to pursue this canceled subject matter by way of a divisional application filed before abandonment or issuance of the present application or any continuing application thereof.

Claim 14 stands rejected as being indefinite under the second paragraph of 35 U.S.C. §112. Applicants have altered the dependency of claim 14 to eliminate any potential indefiniteness.

Claims 1-3, 6, 10, and 12-14 are deemed to be anticipated under 35 U.S.C. §102(b) by Nishimura, et al. – U.S. Patent No. 4,883,529 ("Nishimura"). In addition, claims 4, 5, 7-9, and 16 were rejected as being unpatentable under Section 103(a) by Nishimura. The Examiner indicated that claims 11 and 15 would be allowable if rewritten in independent form. Applicant appreciates the indication of allowable subject matter and has adopted the Examiner's suggestion to rewrite these in independent form.

Claim 9 has been rewritten in independent form. Particularly, the Examiner was of the view that the S-shaped cold channel was well-known in the art. Although an S-shaped cold chamber may be known, the combination and use with the teachings of Nishimura with respect to the claimed method steps is respectfully traversed. Nishimura is directed to a circular tube shape arrangement. One end of the tube is grasped by front chuck 17 and rotated about axis 18c while the second end of the tube is supported by rod 21. This results in a structure that is circular in a single plane. Contrary to the Examiner's suggestion that converting Nishimura into a double helix would require no more than a duplication of parts of the chuck rollers in order to

U.S. Serial No. 09/974,639
Response to Office Action
Mailed October 20, 2004

Page 8 of 8

bend two sections simultaneously to achieve a double helix shape, Nishimura would be incapable of producing such a final shape. There is no teaching of forming an initial S-shaped central portion before the bending is undertaken. Moreover, and as described in the present application, and as shown in Figure 9, supports are required on opposite ends of the legs to be disposed at an angle to allow formation of the helix. Merely duplicating the parts of Nishimura would not result in a helical arrangement without starting the central portion in an S-shape, or tilting the end sections during bending. Moreover, there is no teaching or even suggestion in Nishimura of such a concept, and therefore it can only be concluded that such teaching is taken from applicants' own disclosure. Such a hindsight use of applicant's teachings is impermissible. The reference to Tokes, et al., Soules, et al., and Holzer merely is representative of the final shape, rather than the process and method steps set forth and claimed in the present application.

Thus, claims 6, 7, and 8 define further limitations that are neither shown nor suggested in Nishimura and that could equally serve as the basis for independent protection.

In light of the revised dependencies of the claims to new independent claim 9, it is believed that claim 9 and the associated dependent claims are allowable over the prior art for the reasons noted above. Accordingly, all formal and informal matters having been addressed, this application is in condition for allowance. Early notice to that effect is earnestly solicited.

Respectfully submitted,

FAY, SHARPE, FAGAN,
MINNICH & MCKEE, LLP

22 February 2005
Date

Timothy E. Mauman
Timothy E. Mauman
Reg. No. 32,283
1100 Superior Avenue, 7th Floor
Cleveland, Ohio 44114-2579
(216) 861-5582

N:\GECZ\200606\WMS0000774V001.doc